Supreme Court, U. S.
FILED
JUL 7 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

NO. 75-31

R. C. WRIGHT, Warden, Et al.,

Petitioner,

vs.

JERRY L. JOHNSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

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NO. 74-

R. C. WRIGHT, Warden, Et al.,

Petitioner,

vs.

JERRY L. JOHNSON,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered on April 2, 1975.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 509 F.2d 828 (5th Cir. 1975) and is set out in Appendix A hereto, pp. 1a-11a, *infra*.

JURISDICTION

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on April 2, 1975. A

timely motion for rehearing was filed, and was denied by that Court on April 28, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1254 (1).

QUESTION PRESENTED

DID THE COURT OF APPEALS ERR IN RULING THAT THE STATE OF GEORGIA IS REQUIRED TO PROVE, AS AN ESSENTIAL ELEMENT OF THE OFFENSE OF CARRYING A WEAPON WITHOUT A LICENSE, **GEORGIA CODE ANN.** SEC. 26-2903, THAT THE ACCUSED DID NOT POSSESS A LICENSE, WHERE THE GEORGIA SUPREME COURT HAS RULED THAT THE POSSESSION OF A LICENSE IS AN AFFIRMATIVE DEFENSE TO SAID OFFENSE, TO BE RAISED BY THE DEFENDANT?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. This case involves the Fourteenth Amendment to the United States Constitution.

2. This case also involves the following provisions of the Code of Georgia:

a. **Georgia Code Ann.** Sec. 26-2903
Carrying Pistol without License.

A person commits a misdemeanor when he has or carries on or about his person outside of his home, automobile or place of business any pistol or revolver, whether concealed or not, for which he has not obtained a license from the ordinary of the county in which he resides.

b. **Georgia Code Ann.** Sec. 26-2904
License to Carry Pistol or Revolver.

The ordinary of each county may on application under oath and payment of a license fee of three dollars issue a license, either in term or during vacation, to any resident of the county authorizing the applicant, for a period of three years from the granting of such license, to have and carry a pistol or revolver in an open manner and fully exposed to view or in his motor vehicle provided the applicant: (a) is twenty-one years or older; (b) is mentally competent; (c) has not within the 10 years immediately preceding the application been convicted of a felony or within the two years immediately preceding the application been convicted of a forcible misdemeanor; and (d) gives a bond, with a surety approved by the ordinary of said county, payable to the Governor in the sum of $300 conditioned upon the lawful use of the pistol or revolver.

The ordinary granting the license shall keep a record of the name of the person taking out the license, the name of the maker of the firearm to be carried, and the caliber and number of the firearm. The ordinary shall not grant a license to any applicant who does not comply with the above requirements and furnish the required information. The ordinary of the county where the license was issued shall, after notice and hearing, revoke the license upon adjudication of mental incompetency, upon the conviction of a felony, a forcible misdemeanor, or a violation of section 26-2901 or section 26-2902.

STATEMENT OF THE CASE

On January 7, 1972, at about 2:30 p.m., Officer D. F.

Lindstrom of the Atlanta Police Department, heard a call over the police radio which, in essence, stated there was a suspicious person at a grocery store on Lee Street, in southwest Atlanta. (Hearing Transcript, p. 3; Trial Transcript, p. 17). Officer Lindstrom answered that call, which was at Patterson's Grocery Store. There, Officer Lindstrom talked to two or three employees, who stated that a tall, black male in his early twenties, wearing a flop-hat had entered the store. They indicated that they believed this man had been involved in the robbery of the store two days previously. The employees informed him that the subject had left the scene in a red Ford Fairlane which was jacked up in the rear with a license tag wired on to the car. It was believed that the car was occupied by four black males, one or two of whom had flop-hats on. Officer Lindstrom passed this information over the police radio and set about to search for the suspect. (Hearing Transcript, pp. 4, 17; Trial Transcript, pp. 17, 18, 19, 27).

Officer R. R. Wilbanks heard the call over the radio. He joined the search of the immediate area. Officer Lindstrom was driving down Ashby Street when he spotted a car fitting the description of the subject vehicle going in the opposite direction. He turned around and followed it. (Hearing Transcript, p. 4; Trial Transcript, p. 20). The two cars passed Officer Wilbanks, who was proceeding in the opposite direction. He turned and followed. After they crossed the railroad tracks, at the intersection of Murphy Street and Lillian Street, Officer Wilbanks turned on his blue light, honked, and pulled the car over. Officer Lindstrom, who was in a police station wagon, pulled in front of the subject vehicle. (Hearing Transcript, pp. 5, 6, 18, 19; Trial Transcript, pp. 21, 27).

The suspects, including Respondent, were transported to the police station. They were advised of their rights, and asked to sign waiver forms, acknowledging the reading of their rights, and waiving the presence of counsel at a line-up. Respondent signed both forms. The next day, January 8, 1972, at about 2:30, Respondent appeared in a line-up, at which time he was identified by Mr. Willie Verdon, operator of Willybern's Food Store in Atlanta, which was robbed on December 10, 1971. (Hearing Transcript, pp. 22, 33, 34, 42, 43; Trail Transcript, pp. 35, 36, 37).

Respondent was subsequently indicted by the Grand Jury of Fulton County and charged with the offenses of armed robbery, carrying a concealed weapon, and carrying a pistol without a license. To said charges, Respondent pleaded not guilty, and, on July 24, 1972, was placed on trial in the Superior Court of Fulton County, Georgia, before the Honorable Jack Etheridge and a jury.

During the trial, after the evidence and arguments had been presented, the judge sought to instruct the jury on the law. His charge, in pertinent part, was as follows:

> Now, this defendant has been charged, as I said in one indictment, with the possession of a pistol without a license, and with the carrying of a pistol outside of his home, not in an open manner. I instruct you that the State has proven a prima facie case of the possession of a pistol in this case by someone who is alleged by the Grand Jurors here to have been the defendant, which the defendant denies. And when a prima facie case is made, I charge you that it is then upon the defendant, if you believe the defendant to be the person alleged to have committed this crime, to show that he did

> possess a license to carry the weapon alleged to have been carried by the State. The defendant in doing so must prove that a license existed to carry the weapon in order to overcome the prima facie showing of the violation of this law by the State. (Trial Transcript, p. 171).

The jury returned a verdict of guilty, and the defendant was sentenced to a term of ten (10) years in the penitentiary for the offense of armed robbery, and twelve (12) months each for the two pistol offenses, to run concurrent to the armed robbery sentence. Respondent then proceeded by direct appeal to the Supreme Court of Georgia, which, on February 22, 1973, affirmed the conviction. *Johnson* v. *State*, 230 Ga. 196 (1973). *See*, Appendix C.

Respondent on April 4, 1973, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 in the U.S. District Court for the Northern District of Georgia, Atlanta Division. This petition was dismissed on April 27, 1973, because Respondent had failed to exhaust all State remedies. Upon motion for leave to appeal *in forma pauperis*, the District Judge reconsidered his original order, and determined that since Respondent had raised all issues alleged in his petition on his appeal to the Georgia Supreme Court, and that since the Georgia Supreme Court had reached and decided each of those issues, the exhaustion requirement had been met.

That order was entered by Judge Edenfield on May 23, 1973. Prior to the entry of that order, and pursuant to the order of the District Court dated April 27, 1973, Respondent filed a petition for habeas corpus in the Superior Court of Fulton County on May 11, 1973. In this petition, Respondent raised the same issues alleged

in his petition to the District Court. On May 25, 1973, after entry of the order of May 23 by the District Judge, Respondent's petition was dismissed in Fulton Superior Court.

On August 20, 1973, the District Judge entered an order denying Respondent's petition. The order was eventually appealed to the United States Court of Appeals for the Fifth Circuit, which, on April 2, 1975, entered an order affirming in part and reversing in part, the order of the District Court. A motion for rehearing was timely filed, and denied on April 28, 1975.

In his petition to the District Court below, and in his appeal to the Supreme Court of Georgia, respondent contended that the charge, quoted above, placed an impermissible burden upon him to prove that he had a license to carry the pistol outside his home, office or automobile. In each instance, the Court disagreed with him. *See*, Appendices B and C. The Court of Appeals reversed. *See*, Appendix A.

The petitioner before this Court was the Respondent-Appellee below. It is respectfully urged that this Court review that portion of the decision of the Court of Appeals which revised the order of the District Court.

BASIS FOR FEDERAL JURISDICTION BELOW

The jurisdiction of the United States District Court for the Northern District of Georgia, Atlanta Division, was invoked by the respondent, and accepted by the Court, pursuant to 28 U.S.C. Sec. 2254 (1970). *See*, Appendix B.

REASON WHY THE WRIT SHOULD BE GRANTED

This Court should issue the Writ of Certiorari to the

Court of Appeals below because that Court, in its decision in this case, resolved an important issue of Georgia law in a way contrary to prevailing Georgia law as enunciated by the Supreme Court of Georgia.

A.

In 1910, the General Assembly of Georgia acted to regulate the possession and use of handguns in Georgia. In that year, Georgia's first handgun licensing statute was enacted. Georgia Laws 1910, pp. 134, 135. That statute was amended in 1960 and superseded in 1969. The present statute is set out above. *Georgia Code Ann.* Sec. 26-2904. For sixty-five years, it has been illegal in Georgia to possess a handgun outside of the home or office.

The license required to authorize such possession of a handgun is issued by the ordinary (now probate judge) of the county to any resident of that county meeting the following qualifications: a) he is twenty-one years of age; b) he is mentally competent; c) he has not been convicted of a felony within the ten years immediately preceding the application; and d) he has not been convicted of a forcible misdemeanor within the two years immediately preceding the application. Any resident meeting these qualifications, who makes application to the ordinary and gives a bond conditioned upon the proper use of the handgun, will be issued a license.

That license authorizes the named person, and no one else, for a period of three years, to carry the handgun specified in the license by make, caliber and serial number, "in an open manner and fully exposed to view or in his motor vehicle," when outside the confines of his home or office. *Georgia Code Ann.* Sec. 26-2904.

This case involves the enforcement arm of this licensing provision, which is codified as *Georgia Code Ann.* Sec. 26-2903. In Georgia, it is prima facie illegal to possess or carry a handgun outside of the home, office or automobile. *Ezzard* v. *State*, 229 Ga. 465 (3) (1972). But, as an accomodation to the people who have a need, real or perceived, to carry a weapon, this prima facie illegality may be justified by proof of the acquisition of a license. Since the Second Amendment is inapplicable to individuals, no person has an absolute right to bear arms. *United States* v. *Cruikshank*, 92 U.S. (2 Otto) 542 (1875). Therefore, the action of the General Assembly of Georgia in establishing this statutory scheme was constitutionally permissible, based upon the legislative determination that the safety and protection of all Georgians required such action.

The enforcement statute, enacted to enforce the mandate of the licensing statute, is a criminal statute carrying misdemeanor punishment. In a prosecution under that statute, and under the predecessor statute, the Appellate Courts of Georgia have consistantly required that the State prove that the accused carried a handgun on or about his person in a place not his home, office, or automobile. This holding has been based upon the construction of the statute, finding that those are the essential elements of the offense stated in *Georgia Code Ann.* Sec. 26-2903. With equal consistency the Georgia Courts, in these same cases, have held that the possession of a license, duly-issued, is an affirmative defense, to be raised by the defendant, and considered by the jury with the other evidence, and not to be negated in advance by the State. *Ezzard* v. *State, supra. See, Reed* v. *State*, 195 Ga. 842, 850, 851 (5) (1943); *McHenry* v. *State*, 58 Ga. App. 410 (1) (1938); *Fanning* v. *State*, 39

Ga. App. 531 (1929); *Webb* v. *State*, 18 Ga. App. 44 (1) (1916); *Elkins* v. *State*, 17 Ga. App. 479 (1915); *Brown* v. *State*, 15 Ga. App. 484 (1914). This construction and interpretation of the Georgia statutory scheme by the highest court in the State of Georgia is binding on the federal courts. *Coleman* v. *Alabama*, 399 U.S. 1, 9 (1970); *Kingsby International Pictures Corp.* v. *Regents of University of State of New York*, 360 U.S. 684, 688 (1959).

The essential elements of the offense of carrying a pistol without a license are the possession of a pistol or revolver outside of the home, office, or automobile. Whether or not an accused has a license authorizing him to carry the handgun under circumstances is a matter of defense, and is not an essential element of the offense.

This construction has been placed on this criminal statute for obvious reasons. In all criminal cases, the law requires that the prosecution prove, beyond a reasonable doubt, all of the essential elements of the offense charged. But where there is some fact with regard to such an offense, the proof of which involves the proof of a negative, and where the knowledge of that fact is peculiarly within the knowledge of the defendant; and where going forward with the evidence on that issue would not subject him to undue hardship or unfairness, it is logical to require the defendant to go forward with the evidence. This is the rationale behind the construction placed on the statute by the Georgia Supreme Court. *See, Wallace* v. *State*, 224 Ga. 255 (3) (1968). This rationale has been extended in Georgia to drug sale cases. The Georgia Supreme Court has held that the State does not have to prove that the defendant did not have authority to sell heroin. *Wood* v. *State*, 233 Ga. 347 (1974).

The logic of this approach is irrefutable. If the prosecution were required to prove that the accused did not have a license, given the licensing statute discussed above, the best effort that the State could make would be to produce evidence from every county in Georgia (totaling 159), that there was not on the records of the Court of Ordinary (now probate court) any record of a license issued to the accused authorizing him to carry a handgun. Petitioner seriously questions whether or not such evidence would be sufficient to prove, beyond a reasonable doubt, that no license had been issued to the accused.

The approach adopted in Georgia is not unconstitutional. Because the possession of a license is denominated by the Georgia Supreme Court as an affirmative defense, the defendant need only present evidence thereon, unless the State's case raises the issue. *Georgia Code Ann.* Sec. 26-401(a). It is not suggested that, within this statutory scheme, the defendant is required to prove that he had a valid license. No burden is cast on him more than to simply go forward with the evidence regarding the license. Such a burden does not violate his right against self-incrimination. *Barnes* v. *United States*, 412 U.S. 837 (1973). While he could take the stand, such would not be absolutely necessary. He could raise the issue by coming forward with a certified copy of the license, or by testimony of other witnesses.

If the defendant were to go forward with evidence on this affirmative defense, then the State could come forward with evidence in rebuttal. The only burden that was shifted by the rulings of the Georgia appellate courts, and by the statute, and by the instruction given in this case, was the burden of going forward with the

evidence. Overall, the burden of proof rested upon the prosecution from the time issue was joined until the time verdict was returned.

B.

The decision of the Court of Appeals below, in disregard of the construction of the statute by the highest court in Georgia held

> that the trial court's instruction violated Appellant's right to due process in permitting the jury to infer that his pistol was unlicensed from the evidence that he possessed one, and also in shifting to him the burden of proof on an essential element of the offense. 509 F.2d at 830.

This holding actually breaks down into two separate legal conclusions. First, the Court determined that in a prosecution under *Georgia Code Ann.* Sec. 26-2903, the State was allowed to prove that the defendant possessed a handgun outside of his home, office or automobile, and that from that evidence the jury was allowed to infer that the handgun was unlicensed. Second, the Court determined that the instruction shifted to the defendant the burden of proof on an essential element of the offense, contrary to this Court's holding in the case of *In re Winship*, 397 U.S. 358 (1970), and that of the Court of Appeals in *Smith* v. *Smith*, 454 F.2d 572 (5th Cir. 1971).

This analysis of the statute, and of its application in the present case, is entirely erroneous. In its analysis below, the Petitioner will attempt to demonstrate the magnitude and the impact of that error.

C.

In ruling that the charge, which followed the statute

as construed and which was held to be proper under state law, shifted to the defendant the burden of proof on an essential element of the offense charged, the Court of Appeals disregarded entirely the construction of the statute by the Georgia Supreme Court.

Respondent raised this same issue in the Georgia Supreme Court. That Court found, upon a construction of the statute, that there was no merit in the contention. The Court quoted the holding in the case of *Ezzard* v. *State, supra.*

> " 'There is no merit in the Appellant's contention that he was required to carry the burden of proof on the two misdemeanor charges. The State had the burden to show, and did show, that the Appellant carried a pistol on his person, outside his home, not "in an open manner and fully exposed to view." . . . The Appellant in defense had the privilege of showing that he had a license to carry the pistol. . .,' "

Johnson v. *State*, 230 Ga. 196 at 200, 201 (4b) (1973).

The construction of this statute by the Georgia Appellate Court is clear. The *corpus delicti* of the offense is to carry a pistol outside of the home, office or automobile, even if in an open manner. The possession of a valid license is an affirmative defense to be raised by the defendant. The District Court believed itself to be bound by this analysis. *Johnson* v. *Wright*, Civil Action No. 18116 (N.D. Ga., August 20, 1973). *See*, Appendix B.

As so construed, the Georgia statutory scheme, and this charge, do not violate the rule of *In re Winship, supra.* In that case, this Court held that due process protects the accused in a criminal prosecution against conviction except upon proof beyond a reasonable

doubt of every fact necessary to constitute the crime with which he is charged. Here, as construed by the Georgia Supreme Court, the crime is proven by evidence which shows the accused possessed a pistol outside of his home, office or automobile. The State proved those facts beyond a reasonable doubt in this case. The State carried its burden under *Winship*. The fact that the State did not prove, and was not required to prove, that the accused did not have a license, does not result in a violation of due process, under *Winship*. Possession of a valid license is an affirmative defense to be raised by the defendant, not an element of the off case, to be proven by the State.

Such a division of the burden of going forward with the evidence does not violate the rule of *Smith* v. *Smith*, *supra*. That case involved a charge on the defense of alibi which stated: " 'alibi as a defense *must* be established' to the satisfaction of the jury." The Court of Appeals there held that the error lay in the fact that the language of the charge, by using the imperative "must" shifted the burden to the defendant.

> No such burden can be sustained under our Constitution. Evidence of alibi should come into a case like any other evidence and must be submitted to the jury for consideration of whether the evidence as a whole on the issue of presence proves the defendant's guilt beyond a reasonable doubt. 454 F.2d at 578.

The problem in the *Smith* case was simply that the defendant had raised the defense of alibi, and the trial court had charged that the defendant had the burden of sustaining that defense. The Court of Appeals believed that the evidence of alibi should be submitted to the jury like any other evidence, to be considered for whatever it was worth, with all the other evidence. The jury then, upon a consideration of all of the evidence, would determine whether the defendant was present and committed the offense, or whether he was absent.

This is exactly what the statutory scheme in question here contemplates. The possession of a valid license is an affirmative defense. *Ezzard* v. *State*, *supra*. An affirmative defense, like entrapment, coercion, self-defense, justification, etc., is to be raised by the defendant, but it need not be proved, and no burden is cast upon the defendant to do more than go forward with the evidence. *Georgia Code Ann.* Sec. 26-401(a). Such a burden does not violate the defendant's right against self-incrimination. *Barnes* v. *United States*, *supra*.

Such a statutory scheme, with a like division of the burden of going forward with the evidence, has been adopted by the federal courts in several cases. In *Casey* v. *United States*, 276 U.S. 413 (1928), this Court had occasion to deal with a statutory presumption in narcotics cases. That statute, which has since been recodified, appeared at 26 U.S.C. Sec. 4704(a). That presumption arose if the Government proved that the accused possessed opium or a derivative thereof not in the original stamped package. If such was proven, it was presumed, absent an explanation from the accused, that the drug was purchased illegally.

This Court, speaking through Mr. Justice Holmes, stated

> The statute here talks of prima facie evidence, but it means only that the burden shall be upon the party found in possession to explain and justify it when accused of the crime that the statute creates. . . . It is consistent with all the constitutional protections of accused men to throw on them the bur-

> den of proving facts peculiarly within their knowledge and hidden from discovery by the Government. . . . In dealing with a poison not commonly used except upon a doctor's prescription easily proved, or for a debauch only possible by a breach of the law, it seems reasonable to call on a person possessing it in a form that warrants suspicion to show that he obtained it in a mode permitted by the law.

276 U.S. at 418.

This Court subsequently held that this presumption merely places on the accused, at a certain point, the burden of going forward with the evidence. *Roviaro* v. *United States*, 353 U.S. 53, 63 (1957).

Assuming that the *Casey* case, as construed in *Roviaro*, is still sound law, as is suggested in *Turner* v. *United States*, 396 U.S. 398, 403, 404, 405 (1969), the ruling by the Georgia Supreme Court in the present case was absolutely correct, and that of the Court of Appeals was absolutely erroneous. The presumption dealt with in those cases was of guilt from unexplained possession. This Court allowed to stand a rebuttable statutory presumption upon which the Government could rely as a substitute for proof of an essential element of the offense charged. In the present case, the Georgia Supreme Court required that the prosecution prove *all* of the essential elements of the offense. Then the defendant was permitted to come forward with his defense. The only burden shifted to him was the burden of going forward with the evidence.

This Court, in *Casey*, recognized the difficulty which the prosecution might have in proving facts peculiarly within the knowledge of the accused and hidden from the Government. A similar situation arises in the case

sub judice, as Petitioner has attempted to point out above. Additionally, it should be noted that Georgia has no discovery procedure in criminal cases. *Henderson* v. *State*, 227 Ga. 68 (1970).

Finally, in *Casey*, this Court pointed out that the drug could only be possessed legally by authority of a prescription, or illegally; and, that if the drug was possessed by authority of a prescription, that prescription could be proven with ease. In Georgia, a pistol may be possessed outside the home, office or automobile legally, by authority of a properly issued license. Under any other circumstances, the possession of a pistol in such a situation is unlawful. However, in some situations, such illegality is excused. *See*, *Pickett* v. *State*, 123 Ga. App. 1 (1) (1970).

Just as a prescription to possess drugs may be, with ease, shown by the accused, so may a license be introduced. Just as emergency is a defense to the charge under *Georgia Code Ann.* Sec. 26-2903, so too a valid license is a defense. There is no constitutional impediment to shifting to the accused the burden of going forward with the evidence on the issue of emergency if that be his defense. How then can there be any constitutional impediment where the defense is not emergency, but the possession of a valid license. The Petitioner can see absolutely none.

Furthermore, the Petitioner respectfully suggests that in numerous other prosecutions, the efficient and effective enforcement of the criminal laws would be effectively thwarted if the ruling of the Court of Appeals is allowed to stand. It is important to note that many federal drug prosecutions are controlled during trial by the rules set out in 21 U.S.C. Sec. 885. Prosecutions in

the area of tax evasion and of federal firearms violations would also be affected.

Many state prosecutions would also be affected by this decision, if allowed to stand. In most jurisdictions, a defense to a charge of illicit possession of drugs is the possession of a doctor's prescription. What havoc would be wrought in the enforcement of the drug laws if the prosecution was required in each case to negate the issuance of a prescription? For the prosecution to prove that the accused did not have a valid prescription would be as easy as proving that no angels can sit on the head of a pin, or that no fat man can pass through the eye of a needle. The practical effect of the decision of the Court of Appeals is to legalize the possession of any drug which may be legally possessed with a prescription. In Georgia, that decision makes legal the licenseless possession of any pistol, anywhere, because, in its present form, *Georgia Code Ann.* Sec. 26-2903 is unenforceable.

It would be relatively easy for Georgia to resolve the particular dilemma created in this case. The General Assembly could simply adopt a rule similar to that adopted by the federal government. In a federal prosecution for possessing an unlicensed firearm, the prosecution must negate a valid registration. *U.S.* v. *Collier*, 381 F.2d 616 (6th Cir. 1967). This is due to the fact that lack of registration is an essential element of the offense under the National Firearms Act, 26 U.S.C. Sec. 5841, 5851, 5862. However, such proof is relatively easy for the Government since all such registrations are maintained in a central location by the Department of the Treasury. The State of Georgia could easily set up such a centrally-located agency for maintaining such records. Or, in the alternative, the individual could be

required to carry the license on his person when he carries the pistol. However, in the case of prescription drugs, how could the state prove that an accused did not have a prescription? How could the state change the law to make such proof possible if it were required? The only way would be to make all possession illegal, irrespective of a prescription. Such would be inhumane. The other alternative would be to make all possession legal. Such an alternative would be equally inhumane.

The impact of the decision of the Court of Appeals far exceeds the boundaries of this case. That decision, if allowed to stand, could have a profound effect on the course of law enforcement for years to come. For that reason, Petitioner files this request for certiorari. Petitioner, but for the overall impact of their opinion, would have no qualms about the order of the Court below. But that opinion, in practical effect, and carried to its logical extension, makes unenforceable numerous criminal statutes, both state and federal. For that reason, this Court should grant the Writ of Certiorari to the Court of Appeals for the Fifth Circuit, and reverse the decision below.